

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS**

DERRICK GIBSON
MSGT, U.S. ARMY,

and

STEVEN BROWN
SSG, U.S. ARMY, *et al*, for themselves
and all others similarly situated

Plaintiffs

v.

LLOYD AUSTIN
Secretary of Defense,
U.S. DEPARTMENT OF DEFENSE
Washington, D.C. 20301

and

JANET WOODCOCK,
Acting Commissioner,
U.S. FOOD AND DRUG
ADMINISTRATION

and

XAVIER BECERRA
Secretary of the U.S. Department of
Health and Human Services
U.S. DEPARTMENT OF HEALTH
AND HUMAN SERVICES

Defendants

Civil Action No. _____

Declaration of Justin Lee King, U.S. Marine Corps

I, Major Justin Lee King, do hereby declare as follows:

1. I am over the age of 18 years, have personal knowledge of the matters set forth in this Declaration, and if called upon to testify to them, I would and could do so competently.

2. I am currently domiciled in Gilmer, Upshur County, Texas.
3. I am a 7557/KC-130J Aircraft Commander in the United States Marine Corps currently serving at Marine Corps Air Station Cherry Point, NC.
4. I was commissioned in the United States Marine Corps in May 2009 after completing four years of school and training at the United States Naval Academy. In July 2010, I graduated in the top ten percent of my class from The Basic School in Quantico, VA. In May 2012, I completed flight training at Naval Air Station Corpus Christi, TX, was designated as a Marine Aviator, and selected to fly the KC-130J Super Hercules. My first duty station following flight training was Marine Corps Air Station Cherry Point, NC.
5. As a Company Grade Officer, I served in several leadership roles including duties as an Airframes Division Officer, Flight Officer, and Aircraft Commander. As the Airframes Division Officer, I was responsible for leading the Marines tasked with repairing, maintaining, and inspecting the body of the aircraft. As the squadron Flight Officer, I was responsible for the scheduling of all pilots and aircraft in my squadron. This included following priorities, de-conflicting complex schedules, and maximizing use of limited flight time, all while following all applicable rules and regulations. As a KC-130J Aircraft Commander, I was responsible for the safety and well-being of my crew as well as mission accomplishment. I was designated as a Basic Instructor Pilot, allowing me to teach certain missions to new co-pilots.
6. I was competitively selected on the Commandant's Career Education Board to attend Naval Postgraduate School. I graduated With Distinction with a Master's of Science in Systems Technology and received the John McReynolds Wozencraft Award for Academic Excellence in Joint C4I and an Outstanding Thesis recognition. From the Naval

Post Graduate School, I received orders to Marine Corps Systems Command. I worked as a Project Officer on the acquisition of the Tactical Service-Oriented Architecture, a software suite that standardizes the transmission of tactical data between legacy tactical systems.

7. As a Field Grade Officer, I served as the Project Officer for the Marine Air-Ground Task Force Common Handheld (MCH) tablet and Wired in the Defense (WID) projects.

The MCH displays and transmits critical data to both the Marine on the ground as well as the unit commander. The WID provides a rudimentary way to transmit voice

communications in a hostile electro-magnetic environment. I received a Navy

Commendation Medal for my work on these projects. I received orders to Marine Corps

Station Cherry Point, NC, where I re-qualified in the KC-130J after five years of being out the cockpit.

8. Since my commissioning, I have now served honorably for 12 years and 10 months (16 years and 10 months including my time at the Naval Academy), and I will continue to do so God willing. Throughout my career, I deployed numerous times in support of Special Purpose Marine Air-Ground Task Force – Crisis Response – Africa, including embassy evacuation and humanitarian assistance in Africa.

9. I submitted a Religious Accommodation (RA) request in response to the COVID shot mandate.

10. After I submitted my RA, I was placed in a non-deployable status. However, in March 2022, I was sent from Marine Corps Air Station Cherry Point, NC to Twenty-nine Palms, CA for a Service-Level Training Exercise for seven weeks. This exercise is supposed to mimic a real deployment, including living in close-quarters with other Marines. I was told I had to go due to staff shortages at my command.

11. I have been ordered by my commander on multiple occasions to report to the medical clinic or submit an exemption.

12. In Jan 2022, I tested positive for COVID at a military medical facility with the results included in my medical records. A few weeks later, I tested positive for anti-bodies (test conducted at Harris Teeter pharmacy) and T-cells (test completed by T-detect), indicating natural immunity.

13. I received back an initial denial from the Deputy Commandant, Manpower & Reserve Affairs (DC, M&RA) on December 2, 2021 (dated November 29, 2021). The denial contained many inaccurate statements which I thoroughly addressed in my appeal.

14. I appealed the initial denial on December 15, 2021.

15. My appeal is still pending with the Assistant Commandant of the Marine Corps.

16. I am facing a General Discharge, loss of any potential retirement pension, grounding from my aviation duties, loss of post 9/11 G.I. Bill benefits, and restrictions from: Permanent Change of Stations, Temporary Additional Duty, and leave outside of local area.

17. If I do not get the COVID shot on a date yet to be determined, the process will immediately begin to place me on the Officer Disciplinary Notebook (ODN). Placement on the ODN makes me ineligible for command, ineligible for Permanent Change of Station orders, ineligible for promotion boards, ineligible for Professional Military Education boards, ineligible for career level schools, ineligible for deployments, and ineligible for all other normal career progressions, including retirement.

18. In addition, being placed on the ODN will initiate the Board of Inquiry Process, where I will be required to go before an administrative hearing to determine whether I

should be stripped of my commission and removed from the military for “misconduct.” For me and all others unable to get the COVID shot because of our religious beliefs, this allegation of “misconduct” will be “substantiated” absent injunctive relief, because they have given us a “lawful order,” and denied our religious accommodation request.

19. Every COVID refusal within my personal knowledge has been recommended for separation.

20. An officer will not simply be removed from the ODN, absent the allegation of misconduct being formally found “unsubstantiated,” and the BOI and ultimate separation process will not stop without injunctive relief.

21. My vaccination status did not prevent me from continuing to execute the mission of the Marine Corps. During the pandemic, I completed several temporary duty assignments and traveled across the country for training and other tasks as demonstrated in the Defense Travel System where all travel requests are authorized and subsequently paid via a voucher process. I have continued to fly while my appeal is pending, but have been told I will be grounded once it is denied. I have been told to deploy to Twenty-nine Palms for seven weeks, despite being considered non-deployable.

I declare under penalty of perjury, under the laws of the United States, that the foregoing statements are true and correct to the best of my knowledge.

Executed this March 25, 2022.



Major Justin Lee King